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10/034,776	12/21/2001	James A. Hutchison	010555	9013

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QUALCOMM INCORPORATED  
5775 MOREHOUSE DR.  
SAN DIEGO, CA 92121

EXAMINER
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PEREZ, ANGELICA

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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* JAMES A. HUTCHISON

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Appeal 2009-004675  
Application 10/034,776  
Technology Center 2600

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Before MAHSHID D. SAADAT, KARL D. EASTHOM,  
and THOMAS S. HAHN, *Administrative Patent Judges*.

SAADAT, *Administrative Patent Judge*.

DECISION ON APPEAL<sup>1</sup>

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<sup>1</sup> The two month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304 or for filing a request for rehearing as recited in 37 C.F.R. § 41.52, begins to run from the “MAIL DATE” (paper delivery mode) or the “NOTIFICATION DATE” (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

Appellant appeals under 35 U.S.C. § 134 from a final rejection of claims 1-39, which are all the claims pending in this application. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

## STATEMENT OF THE CASE

### *Introduction*

Appellant's invention is directed to an arbitrated audio communication system and a method for point-to-multipoint communication with reduced latency (Spec. ¶ [0004]). Claim 1 is illustrative of the invention and reads as follows:

1. A method comprising:
  - transmitting a request for access to a broadcast link in a point-to-multipoint communication system;
  - transmitting audio with the access request, wherein the audio includes speech; and
  - terminating the audio transmission in the event the access request is denied.

The Examiner relies on the following prior art in rejecting the claims:

Lynk	EP 0 321 672 A2	Jun. 28, 1989
Velius	US 5,594,784	Jan. 14, 1997
Stevens	GB 2 336 975 A	Nov. 3, 1999
Skemer	US 2007/0005954 A1	Jan. 4, 2007

Claims 33 and 34 stand rejected under 35 U.S.C. 101 as being directed to non-statutory subject matter.

Claims 1, 2, 4-11, 14, 16, 20, 21, 23-25, 33, 37, and 39 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Lynk, Stevens, and Official Notice taken by the Examiner.<sup>2</sup>

Claims 3, 12, 15, 17-19, 22, 26, 28-32, 34-36, and 38 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Lynk, Stevens, Official Notice taken by the Examiner, and Velius.

Claim 13 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Lynk, Stevens, Official Notice taken by the Examiner, and Skemer.

Claim 27 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Lynk, Stevens, Official Notice taken by the Examiner, Velius, and Skemer.

#### *Appellant's Contentions*

Appellant does not challenge the 35 U.S.C. 101 rejection of claims 33 and 34. With respect to the claim rejections under 35 U.S.C. 103(a), Appellant contends that the Examiner erred in rejecting the claims as obvious over the combination of Lynk and Stevens because the references, alone or in combination, do not teach or suggest transmission of audio with an access request, as recited in claim 1 (Br. 13). Appellant specifically asserts that the references fail to teach or suggest transmitting audio with the access request because Lynk buffers the voice data and Stevens stores the contents of a call in a mobile radio or in a base station (Br. 13-17). Similarly, Appellant contends that the combination of the references fails to

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<sup>2</sup> The Examiner inadvertently rejected dependent claims 14 and 16 without rejecting their base claim 12. We consider this oversight to be a harmless error.

teach or suggest other claim features such as audio transmission/reception before/without grant, as recited in claims 3 and 4, termination of audio transmission upon denial, as recited in claim 1, or audio transmission serving as access request, as recited in claim 5 (Br. 18-24).

### ISSUE

Has the Examiner erred in rejecting the claims as being obvious over Lynk and Stevens because the combination of references fails to teach or suggest all the claim limitations?

### ANALYSIS

#### *Rejection under 35 U.S.C. 101*

Appellant has not argued the rejection of claims 33 and 34 as being directed to non-statutory subject matter. Accordingly, we sustain the rejection of these claims under 35 U.S.C. 101.

#### *Rejections under 35 U.S.C. 103*

We have reviewed the Examiner's rejections in light of Appellant's arguments that the Examiner has erred. We disagree with Appellant's conclusions. We adopt as our own the findings and reasons set forth by the Examiner in the action from which this appeal is taken and the reasons set forth by the Examiner in the Examiner's Answer in response to Appellant's Appeal Brief. That is, despite Appellant's separate arguments with respect to claims 1, 3, 5, 9, 12, and 31 and claims respectively grouped therewith (*see* Br. 18-24), as indicated *supra*, we agree with and adopt as our own the Examiner's rationale and findings. However, we highlight and address specific findings and arguments regarding claim 1 for emphasis as follows.

We further note that the Examiner properly relied on Lynk for disclosing a wireless transmitter and a processor for transmitting and receiving audio and an access request and on Stevens for disclosing transmission of audio with the access request. In that regard, the Examiner properly cites to pages 5 and 6 of Stevens for disclosing storage of call content at an intermediate point in the network such as in a base station for subsequent retransmission, which meets the claimed transmitting audio with the access request (Ans. 23-25). We agree with the Examiner's reasoning (*id.*) that transmitting the audio data to the base station where the call content is received and stored meets the disputed claim 1 language because transmission of the audio with the access request is evidenced by the voice stored at the base station waiting to be retransmitted. *See Stevens*, 5:37–6:12. Therefore, contrary to Appellant's argument (Br. 18), while Stevens stores the call content when a suitable communication path is unavailable, the call is already transmitted by the mobile unit to a base station to be retransmitted when a requested path becomes available. We observe that claim 1 does not specify the exact location to and at which, respectively, the audio is transmitted or received. As such, the combination of Lynk and Stevens teaches or suggests transmitting audio with the access request.

Additionally, we disagree with Appellant's arguments (Br. 20-24) and adopt as our own the Examiner's reasoning (Ans. 25-26) that the features disclosed in Lynk and Stevens meet the recited steps of terminating audio transmission upon denial of an access request and using the audio transmission as the access request. The Examiner specifically reads (Ans. 25) the claimed terminating transmission on Stevens's deletion of the stored

call content before subsequent retransmission (6:34-37; 11:22-27). We further agree with the Examiner's assertion (Ans. 9, 26) that the presence of speech in Stevens indicates access has been requested since Stevens triggers transmission and requests access as soon as a group voice call to plural mobile units is placed (4:3-10).

### CONCLUSIONS

(1) Appellant has not contested the Examiner's rejection of claims 33 and 34 under 35 U.S.C. 101.

(2) The Examiner has not erred in rejecting claims 1-39 as being obvious.

(3) The 35 U.S.C. 101 rejection of claims 33 and 34 as well as the 35 U.S.C. § 103(a) rejections of claims 1-39 are sustained.

### ORDER

The Examiner's decision rejecting claims 1-39 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(v).

### AFFIRMED

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